



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
FEC PRESS OFFICE
FEC PUBLIC RECORDS

FROM: COMMISSION SECRETARY *MWD*

DATE: March 30, 2004

SUBJECT: COMMENT: PROPOSED AO 2004-07

Transmitted herewith is a timely submitted comment from David P. Fleming, Senior Legal Counsel, Gannett, Co., Inc. regarding the above-captioned matter.

Proposed Advisory Opinion 2004-07 is on the agenda for Thursday, April 1, 2004.

Attachment

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David P. Fleming
Senior Legal Counsel, Gannett Co., Inc.
General Counsel, Gannett Broadcasting

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March 30, 2004

Secretary to the Commission
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: Comments on Draft Advisory Opinion 2004-07

Dear Commission:

The proposed Advisory Opinion 2004-07 cites as precedent Matter Under Review 3657 (Multimedia Cablevision). In MUR 3657, the Commission made only a reason to believe finding that a media company's communications to its subscribers through billing inserts are not entitled to the "media exemption," and issued a subpoena for information. When Multimedia (now owned by Gannett Co., Inc.) moved to quash the subpoena as a press entity not subject to the FEC's jurisdiction, the FEC sought subpoena enforcement, at which point Multimedia Cablevision contested the Commission's legal interpretation of the "media exemption" in federal court. We were confident that the U.S. Court of Appeals for the 10th Circuit would overturn the Commission's interpretation of the media exemption. However, before the Court of Appeals could issue a ruling, the Commission decided by a vote of 5-0 to close the investigation and dismiss the enforcement action. This action had the effect of rendering the appeal moot, and vacating the district court opinion. See FEC v. Multimedia Cablevision, Inc., No. 94-1520-MLB (D. Kan. Aug. 15, 1995), appeal filed Nos. 95-3280 & 95-3315 (10th Cir. Aug. 29, 1995); Argued (Nov. 21, 1996); FEC dismissal by a vote of 5-0, dated Sept. 9, 1997; District Court Order to vacate dated Sept. 23, 1997, vacating its prior decision.

This procedural history diminishes, if not eliminates, the precedential value of MUR 3657. It is not reflected in the draft advisory opinion. Although Multimedia is not a party to proposed Advisory Opinion 2004-07, the legal arguments raised before the Court of Appeals apply to the position proposed in the draft advisory opinion. If the Commission wished to institutionalize a contrary legal position, the Court of Appeals would have been the appropriate forum.

Sincerely,

David P. Fleming

cc: Office of General Counsel
Federal Election Commission